

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 703 KAR 5:240. Accountability administrative procedures and guidelines.

6 RELATES TO: KRS 36.042, 158.150, 158.6451, 158.6453, 158.6455

7 STATUTORY AUTHORITY: KRS 158.6453, 158.6455

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453(3)(a) and KRS 158.6455(1[2])(a)

9 require the Kentucky Board of Education to promulgate administrative regulations to create and  
10 implement a balanced statewide assessment and accountability program that measures the achievement  
11 of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20  
12 U.S.C. 6301 et seq.; and ensures accountability. This administrative regulation establishes administrative  
13 procedures and guidelines for Kentucky's assessment and accountability program.

14 Section 1. Definitions. (1) "Accountable School [~~A1~~]" means a school that is:

15 (a) Under administrative control of a principal and eligible to establish a school-based decision-making  
16 council; and

17 (b) Not an alternative education program operated by, or as a part of, another school.

18 (2) "Alternative education program" is defined by KRS 160.380(1)(b).

19 (3) "Full Academic Year" means 100 or more instructional days of enrollment within the school year.

20 (4) "Full-Time Enrolled Online, Virtual and Remote Learning Program" is defined by 704 KAR 3:535,

21 Section 1(5).

1 Section 2. Assigning Students for School and District Accountability.

2 (1) (a) A student enrolled in an accountable [A+] school for a full academic year shall be counted in the  
3 accountability membership of the accountable [A+] school and shall be attributed to the accountable  
4 [A+] school for accountability purposes. [~~This shall include state agency children or other students who~~  
5 ~~have been enrolled in an A+ school by any authority.~~]

6 (b) A student qualifying as an early graduate based on criteria established in 704 KAR 3:305 shall be  
7 included in the school's accountability calculation in the year in which the student graduates, whether or  
8 not the student has a full academic year of enrollment.

9 (2) A student enrolled in an accountable [A+] school and attending an alternative education program  
10 during the year as a result of local school district policies or procedures shall be counted in the  
11 accountability membership of the accountable [A+] school and shall be attributed to the accountable  
12 [A+] school for accountability purposes if the student's combined enrollment in the accountable [A+]  
13 school and alternative education program is a full academic year.

14 (3) A student enrolled in an alternative education program for a full academic year as a result of local  
15 school district policies or procedures without any enrollment in an accountable [A+] school during the  
16 same year shall be attributed to the accountability of the district that the student would have attended if  
17 not enrolled in the alternative education program.

18 (4) A student not enrolled in any accountable [A+] school or an alternative education program for a full  
19 academic year, but enrolled in a district for a full academic year, shall be assigned to the district for  
20 accountability purposes.

21 (5) The Department of Education shall monitor alternative school placements. If evidence indicates a  
22 district is inappropriately placing students into alternative programs to avoid inclusion in accountability,  
23 the district shall be further investigated by the Department of Education.

24 Section 3. Assigning Students for State Accountability.

1 (1) Students [~~enrolled in alternative education programs, and~~] not attributed to an accountable [A+]   
2 school or a district, shall be aggregated into a state level accountability report.

3 (2) If a student, before completing a full academic year in a school or district as established in Section 2   
4 of this administrative regulation, is enrolled in an alternative education program by a court, a   
5 governmental agency other than a Kentucky public school [;] or Kentucky school district, the student   
6 shall be accountable to the state.

7 Section 4. Inclusion of Schools in Accountability. (1) All accountable [A+] schools shall receive annual   
8 accountability classifications as established in 703 KAR 5:270, for the state's assessment and   
9 accountability system.

10 (2) (a) For reporting purposes, all alternative education programs and full-time enrolled online, virtual   
11 and remote learning programs shall receive annual accountability reports based on tested students.

12 (b) Reports for alternative education programs and full-time enrolled online, virtual and remote learning   
13 programs shall be separate from the accountable [A+] school accountability reporting.

14 (c) The alternative education program and full-time enrolled online, virtual and remote learning program   
15 reports shall state the unique features and characteristics of each [~~the alternative education~~] program and   
16 the appropriate uses and limitations of the data.

17 Section 5. Standard Grade Configuration for Accountability.

18 (1) Accountable grade level configurations shall be elementary, middle, or high school.

19 (a) Elementary shall include any configuration of grades K-5 or K-6.

20 (b) Middle school shall include any configuration of grades 5-8 or 6-8.

21 (c) High school shall include any configuration of grades 9-12.

22 (2) An accountable [A+] school or an alternative education program or a full-time enrolled online,   
23 virtual and remote learning program shall fall into one (1), two (2), or three (3) grade level   
24 configurations for accountability reporting.

1 Section 6. Reporting of Schools with Changed School Service Area.

2 (1) (a) For reporting purposes, a school's past data trend shall be removed from public reporting if a  
3 school has a significant change in its stable population.

4 (b) A school shall be considered to have a stable population, if as a result of a change in service area  
5 boundaries or local board of education policies affecting student population served by a school, the  
6 population of the school remains at sixty (60) percent or higher of its original students from the previous  
7 year in the accountability grades.

8 (c) To determine if the population is stable, the number of students in the stable population shall be  
9 divided by the total number of students in the grades included in the accountability calculations.

10 1. If the stable population is sixty (60) percent or higher, the school's past trend data shall be reported.

11 2. If the stable population is less than sixty (60) percent, the school's past trend data shall not be  
12 reported.

13 (2) A school district shall notify the Department of Education of any school that will have an unstable  
14 population compared to the prior year by June 30.

15 Section 7. Data Review and School or District Appeal of Accountability Classifications.

16 (1) A written request for a data review shall be submitted to the Department of Education within ten (10)  
17 days after the Department of Education officially releases the final accountability classifications as  
18 established in 703 KAR 5:270, to the public.

19 (2) A written appeal of a final accountability classification shall be submitted to the Commissioner of  
20 Education within forty-five (45) days after the Department of Education officially releases the  
21 accountability classifications. The appeal of a final classification shall:

22 (a) Identify clearly the basis for the wrongful effect on the calculations used to place a school into a  
23 classification; and

1 (b) State in detail the requested adjustment to be made to the calculations used to place a school into a  
2 classification.

3 (3) (a) The request for an appeal for a school accountability classification shall be signed by the  
4 principal upon approval of the school council. If there is no school council, the request shall also be  
5 signed by the superintendent, upon approval of the local board of education.

6 (b) The request for an appeal for a district accountability classification shall be signed by the  
7 superintendent upon approval of the local board of education.

8 (4) (a) Department of Education staff shall review the request for an appeal against the standards  
9 established in KRS 158.6455 (6).

10 (b) A committee shall be appointed by the Commissioner of Education to review the pending appeals  
11 and make recommendations to the Commissioner of Education as to whether or not to dispute an appeal.  
12 The committee may include a teacher, a parent, a principal, a district assessment coordinator, a  
13 superintendent, and a counselor.

14 (c) If the appeal is disputed by the department, it shall submit the request to the hearing officer for the  
15 Kentucky Board of Education.

16 (5) The hearing officer shall conduct a hearing in accordance with KRS Chapter 13B. The hearing  
17 officer shall submit a written recommended order to the Kentucky Board of Education for the board's  
18 consideration in rendering its final order, in accordance with KRS Chapter 13B.

19 Section 8. Student Participation in State Assessments.

20 (1) (a) All students enrolled shall participate at the appropriate grade level for the state-required  
21 assessments in grades 3-12.

22 (b) For assessment and accountability purposes, the state shall not use the primary level designator and  
23 all students in grades 3-12 shall be assigned a single grade level. The assigned grade level shall  
24 determine the state tests to administer.

1 (c) Exceptions for testing shall be made for medical-exempted students.

2 (d) Students categorized as English Learners (EL) shall follow testing guidelines established by the  
3 federal Every Student Succeeds Act of 2015, 20 U.S.C. 6301 et seq.

4 (2) For the state assessments in grades 3-12, a school shall test all students during the test window that  
5 are enrolled in each accountability grade on the first day of the school's testing window and shall  
6 complete a roster in the electronic application provided by the Department of Education.

7 (3) A student retained in a grade in which state-required assessments are administered shall participate in  
8 the assessments for that grade again and shall continue to be included in all accountability calculations.

9 (4) A student who is suspended or expelled but continues to receive instructional services required under  
10 KRS 158.150 shall participate in the state-required assessments.

11 Section 9. Students Not Participating in State-Required Assessments. (1) If a student does not participate  
12 in state-required assessments, the school at which the student was enrolled on the first day of the testing  
13 window shall include the student in the roster in the electronic application provided by the Department  
14 of Education.

15 (2) A student who does not take the state assessments and does not qualify for approved exempted status  
16 shall be assigned the lowest reportable score on the appropriate test for accountability calculations.

17 (3) A student reaching the age of twenty-one (21) years of age who no longer generates state funding  
18 under Support Education Excellence in Kentucky shall not be required to participate in state-required  
19 assessments.

20 (4) A student who is expelled and legally not provided instructional services under the standards  
21 established in KRS 158.150 shall not be considered to be enrolled for a full academic year and shall not  
22 be included in accountability calculations.

23 (5) If a student has been expelled or suspended at some point during a year and is enrolled but does not  
24 complete the state-required assessment, the student shall be included in the accountability calculation.

1 (6) (a) If participation in the state-required assessment would jeopardize a student's physical, mental, or  
2 emotional well-being, a school or district shall submit a request for medical exemption[,] to the  
3 Department of Education for approval. The request shall state [~~which shall be subject to the approval of~~  
4 ~~the Department of Education and that states~~] the medical condition that warrants exempting a student  
5 from the assessments.

6 (b) An identified disability or handicapping condition alone shall not be considered sufficient reason for  
7 granting a medical exemption to state-required assessment and accountability requirements.

8 (c) A student with an approved medical exemption shall be excluded from state-required assessments  
9 and [~~state and federal~~] accountability calculations.

10 (7) If the student moves out of state or to a private school before state-required assessments can be  
11 completed in the school or district's announced testing window, the student shall be excluded from  
12 accountability calculations.

13 Section 10. Required Participation in the National Assessment of Educational Progress (NAEP) and  
14 State-Required Field Testing. (1) If a school is selected by the U.S. Department of Education or its  
15 designated contractors to participate in NAEP testing, the school shall participate fully.

16 (2) If a school is selected by the Department of Education to participate in field testing for state  
17 assessment purposes, the school shall participate fully.

18 (38 Ky.R. 1407; 39 Ky.R. 32; eff. 7-13-2012; 41 Ky.R. 2042; eff. 6-8-2015; 46 Ky.R. 1029; eff. 4-3-  
19 2020; 47 Ky.R. 2480; 48 Ky.R. 798; eff. 11-30-2021; TAm eff. 7-20-2023.)

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

APPROVED

\_\_\_\_\_  
Robbie Fletcher, Ed.D.  
Commissioner of Education

Date \_\_\_\_\_

\_\_\_\_\_  
Sharon Porter Robinson, Ed.D., Chairperson  
Kentucky Board of Education

\_\_\_\_\_  
Date



## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on {Month ##, 2024}, at 10:00 a.m., at the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through {Month ##, 2024}. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5<sup>th</sup> Floor, Frankfort, KY 40601, phone 502-564-4474, fax 502-564-9321, email [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov) .

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

703 KAR 5:240

Contact Person: Todd Allen

Phone: 502-564-4474

Email: [todd.allen@education.ky.gov](mailto:todd.allen@education.ky.gov)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative procedures and guidelines for Kentucky's assessment and accountability program.

(b) The necessity of this administrative regulation: KRS 158.6453(3)(a) and KRS 158.6455(1)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides administrative procedures and guidelines for the state assessment and accountability system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides administrative procedures and guidelines to ensure consistent implementation of the state assessment and accountability system.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment adds language regarding students participating in the Full-Time Enrolled Online, Virtual and Remote Learning Program and technical changes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary due to the establishment of Full-Time Enrolled Online, Virtual and Remote Learning Program as defined in 704 KAR 3:535. Adding new language is necessary to address accountability reporting for these programs.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes procedures and guidelines for Kentucky's assessment and accountability program related to Full-Time Enrolled Online, Virtual and Remote Learning Programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment

provides specific procedures and guidelines to ensure consistent implementation of accountability in Kentucky schools and districts in regard to Full-Time Enrolled Online, Virtual and Remote Learning Programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local schools and districts and the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Department of Education will create accountability reports for Full-Time Enrolled Online, Virtual and Remote Learning Programs. Minimal action is required by schools and districts as a result of the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to Kentucky's public schools or districts or the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Department of Education and Kentucky's public schools and districts will be able to evaluate the performance of Full-Time Enrolled Online, Virtual and Remote Learning Programs.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initial costs are not anticipated.

(b) On a continuing basis: The Kentucky Department of Education incurs an ongoing cost of staff and resources in administering the assessment and accountability program. However, there are no additional anticipated costs related to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Department of Education's general funds will be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

## FISCAL IMPACT STATEMENT

703 KAR 5:240

Contact Person: Todd Allen

Phone: 502-564-4474

Email: [todd.allen@education.ky.gov](mailto:todd.allen@education.ky.gov)

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453(3)(a) and KRS 158.6455(1)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq, or its successor; and ensures accountability.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Education is the promulgating agency. The Kentucky Department of Education.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated as a result of this administrative regulation.

Revenues: No revenue will be generated as a result of this administrative regulation.

Cost Savings: Cost savings are not expected as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No differences in expenditures, revenues, or cost savings are expected as a result of this administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The affected local entities are Kentucky public school districts.

(a) Estimate the following for the first year:

Expenditures: Kentucky's public-school districts will not incur cost.

Revenues: No revenue will be generated as a result of this administrative regulation.

Cost Savings: This regulation will not generate cost savings for Kentucky's public-school districts.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No differences in expenditures, revenues, or cost savings are expected as a result of this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3):

There are no additional regulated entities not mentioned in questions 2 or 3.

(a) Estimate the following for the first year:

Expenditures: Not applicable

Revenues: Not applicable

Cost Savings: Not applicable

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: This regulation will not have an overall negative or adverse economic impact on any identified entities.